

United States District Court

FOR THE DISTRICT OF NEBRASKA

WARNER, JOSEPH R.,

Plaintiff

Civil Action No. 8: 22CV377

WARNER, BARBARA J.,

Defendant

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
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COMPLAINT FOR JURY TRIAL

The Plaintiff, Joseph R. Warner, files this action for breach of fiduciary duty against Defendant, Barbara J. Warner.

PARTIES

1. Plaintiff, Joseph R. Warner (hereinafter “Mr. Warner” or “Plaintiff”) is an individual whose domicile is in the State of New Jersey and whose registered mailing address is in Burlington County at PO Box 752 Marlton, New Jersey 08053.
2. Defendant, Barbara J. Warner (hereinafter “Ms. Warner” or “Defendant”) is an individual who resides at 8759 South Glenview Avenue, La Vista, Sarpy County, Nebraska.

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3. Josephine P. Warner (hereinafter “Decedent”) is the mother of both Plaintiff and Defendant and resided at a memory-loss/hospice facility in Papillion, Sarpy County, Nebraska until her death on October 16, 2012.

4. Edmund G. Warner (hereinafter “Father”) is the father of both Plaintiff and Defendant. Father lived with Decedent in an assisted living facility, Mable Rose, in Papillion, Sarpy County, Nebraska until his death on February 6, 2012.

FACTS RELEVANT TO ALL CLAIMS

5. On October 8, 2002, Decedent signed and executed her will.

6. On October 8, 2002, Decedent and Father signed a restatement of the Warner Family Trust (hereinafter “Trust” or “the Trust”).

7. The Trust stated that either of the two grantors, Decedent or Father, could amend or revoke the Trust.

8. On February 15, 2011, Father signed a revocation of the trust agreement, witnessed by Defendant.

9. Once the Trust was revoked, Father transferred assets, originally in the Warner Family Trust account at Wells Fargo Bank, N.A., to an individual account under the name of Father and Defendant with Power of Attorney.

10. Some of the transferred assets included at least \$100,000.00 of an inheritance, which Decedent received on January 5, 2009, from the estate of her brother, Steve Pispeky.

11. On February 6, 2012, Father died.
12. After Father's death, Ms. Warner issued checks from Father's account at Pinnacle Bank to herself, to her family, and to her attorney.
13. Civil claims were later brought against Ms. Warner by Pinnacle Bank for the writing of some of these checks from Father's account after his death.
14. Prior to her death, Decedent resided in a memory loss unit under supervised nursing care. Defendant became her guardian and conservator in 2012.
15. On October 16, 2012, Decedent died.
16. Decedent has three sole heirs, Barbara Warner, Philip E. Warner and Joseph Warner. All three heirs are currently alive and survive the Decedent.
17. On or about October 16, 2012, after the Decedent's death, Ms. Warner transferred thousands of dollars of the Decedent's assets to a federal bank in Texas (hereinafter "Transferred Funds").
18. These Transferred Funds were deposited in a USAA Federal Savings Bank account that named Ms. Warner as sole Trustee.
19. On December 19, 2012, after the Decedent's death, Ms. Warner represented herself as Trustee (despite the previous revocation of the Trust) and transferred Westar Energy stocks owned by Decedent.
20. The Decedent's last will was admitted to probate by the County Court of Sarpy County, Nebraska on December 17, 2012.

21. In December of 2012, Ms. Warner was appointed personal representative of Decedent's estate.

22. On September 12, 2013, Ms. Warner submitted an accounting stating that the Decedent's estate totaled \$129,170.39 in assets.

23. Ms. Warner failed to collect and account for all assets of the Decedent prior to submitting the inventory and the accounting as personal representative for the estate of Josephine P. Warner.

24. Ms. Warner did not report the Transferred Funds or other assets as estate property, when submitting an inventory and accounting for Decedent's estate to the Court.

25. Ms. Warner did not request or obtain misappropriated funds held by the estate of Edmund G. Warner as Guardian of Josephine P. Warner.

26. Although she was present and witnessed Father revoke the Warner Family Trust in 2011, Ms. Warner claimed that the Trust was not revoked.

27. Ms. Warner, the Defendant, operated as if the Warner Family Trust were still valid.

28. Defendant intentionally withheld the inclusion of certain assets in the accountings provided to the Court and beneficiaries, instead treating such assets as Trust assets, rather than part of the estate of Decedent.

29. Defendant then filed a civil action (Sarpy County Court, Sarpy County, State of Nebraska Case No. PR 13-43), seeking to register the revoked Trust, pursuant to

Neb. Rev. Stat. §30-3817, in a direct attempt to conceal and legitimize her inappropriate and unlawful actions described above (see paragraphs 19-28).

30. The civil action filed by Defendant (see paragraph 29) was rejected by the Court, by order of the Sarpy County trial judge; however, a testamentary trust was established on February 28, 2014.

31. On January 8, 2013, Ms. Warner paid herself \$2,406.63 in administrative fees, in excess of what she was authorized to distribute without court approval.

32. On August 28, 2013, Defendant's authority to act as personal representative for the estate of Decedent was terminated by court order.

33. On November 5, 2018, Philip E. Warner accepted the appointment of successor personal representative for the Estate of Decedent.

COUNT I – BREACH OF FIDUCIARY DUTY

34. Mr. Warner realleges and incorporates by reference the facts set forth in paragraphs 1-33 above.

35. The Defendant, Ms. Warner, owed a strict fiduciary duty to Mr. Warner, a beneficiary to the Estate of Josephine P. Warner, and all other potential heirs and/or beneficiaries of Decedent's estate, by virtue of her position as the Personal Representative of Decedent's estate.

36. The fiduciary duty of Ms. Warner included the obligation to account for and accurately maintain all monies and assets in Decedent's estate, and to accurately provide an appropriate inventory and accounting of the assets of the Decedent's

estate to the Court and beneficiaries. The Defendant failed to fulfill this obligation, thereby breaching her fiduciary duty.

37. The fiduciary duty of Ms. Warner, as Personal Representative, further required that any dispensations or distributions of assets of the Decedent's estate be carried out only following the requisite inventory and accounting, and that such be carried out in conformity with the Decedent's wishes, under the Court's direction. The Defendant failed to fulfill this obligation, thereby breaching her fiduciary duty.

38. Ms. Warner, by her actions, as noted herein, breached her fiduciary duty as Decedent's guardian and conservator.

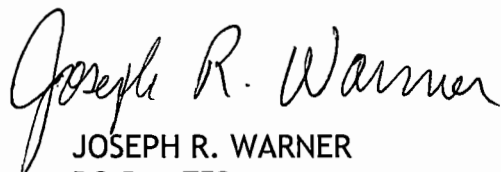
39. Ms. Warner, by her actions, as noted herein, breached her fiduciary duty as the Personal Representative of Decedent's estate.

WHEREFORE, Plaintiff respectfully requests judgment in his favor, in the amount of four hundred and twenty thousand dollars (\$420,000.00), to indemnify Decedent's estate for damages suffered and incurred, costs, interest, attorney's fees, and any further relief to which the court finds Plaintiff is entitled.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE

November 2, 2022

Respectfully Submitted,

A handwritten signature in black ink that reads "Joseph R. Warner". The signature is written in a cursive, flowing style.

JOSEPH R. WARNER
PO Box 752
Marlton NJ 08053
njhorseman@live.com
(609) 234-4808

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JOSEPH R. WARNER

(b) County of Residence of First Listed Plaintiff Burlington, New Jersey
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

BARBARA J. WARNER

County of Residence of First Listed Defendant Sarpy, Nebraska
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause:

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$
420,000CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

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